



POLICE DEPARTMENT

August 7, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective John Sheedy
Tax Registry No. 935733
Warrant Section
Disciplinary Case No. 2014-11417

The above named member of the Department appeared before the Court on May 5, 2015, charged with the following:

1. Said Police Officer John Sheedy, on or about July 12, 2013, at approximately 05:00 hours while assigned to the Warrant Enforcement Squad and on duty, [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he entered the apartment of Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT
PROHIBITED CONDUCT

The Civilian Complaint Review Board (CCRB) was represented by Heather Cook, Esq. Respondent was represented by Michael Lacondi, Esq., Karasyk & Moschella LLP.

Respondent pleaded Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

RECOMMENDATION

Respondent is found Not Guilty.

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FINDINGS AND ANALYSIS

The complainant in this CCRB matter, Person A, resided [REDACTED] with her two young sons. Person B was the father of Person A's younger son. According to a complaint report, on July 6, 2013, Person A reported to police that Person B "came home" drunk, threw her on the floor, choked her, obstructing her airways and bruising her neck, and punched her in her leg and arm (Respondent's Exhibit [RX] A, complaint report). Person B, who previously had been arrested for assaulting Person A in 2011, fled before police arrived (Tr. 18, 38; RX A).

A detective from the 111 Precinct Detective Squad was assigned to Person A's case. Person A told him that she wanted advance notice before police officers came to her residence, and asked that officers come in plainclothes, so as not to upset her children. The squad detective was okay with this, but let her know that he would be away for a few days and Respondent would be working on locating Person B (Tr. 18-19).

On July 12, 2013, at approximately 0520 hours. Person A testified, she awoke to banging at her front door. Upon realizing it was police officers searching for Person B, she "quietly" asked them to leave "immediately" to avoid frightening her sons and told them they were not supposed to show up announced. She told one of the officers, Respondent, that he was "not allowed" to enter her home. She contended that Respondent repeatedly told her to shut up, and that when she stated that Person B was not present, he told her "women like [her]" often get back with their abusers (Tr. 19-21, 28, 37).

Person A asked Respondent if he had a warrant, and he said that he did. She testified that she "knew" the warrant could not have been for her address because it was not Person B's "permanent residence" and his name was not on the lease. She conceded,

however, that Person B stayed with her "quite often," "at least half the week" in 2011 and 2012. She asserted that Respondent put his foot in the door and shoved it open, yelling for Person B, as she tried to close it. At this point, Person A stated that she began banging on the door of her neighbor, Person C, for help and that her neighbor came out and told the officers to leave (Tr. 22-23, 27-28, 32, 35). Person C confirmed to the CCRB that Respondent put his foot in the door of Person A's home. She did not appear to testify but her interview was admitted as CCRB Exhibit 6 (seep. 5).

Respondent was assigned to the Warrant Section. He and his partner, Detective Brendan Fitzpatrick, arrived at Person A's residence intending to search for Person B. Respondent had been assigned an I-card, akin to an internal "Wanted" poster, that was prepared following Person A's complaint report. He learned that Person B also had an active bench warrant. His investigation revealed a possible alternate address, different from the [REDACTED], [REDACTED] address listed on the I-card. The alternate address, which was Person A's [REDACTED] residence, was listed on the arrest report and Criminal Justice Agency sheet from Person B's 2011 arrest for assaulting Person A. Respondent also noted the complaint report, which attributed to Person A the statement that Person B "came home" to the [REDACTED] location on July 6, 2013, and attacked her (Tr. 81-82, 10-11).

Prior to going to Person A's home, Respondent and Fitzpatrick went to the [REDACTED] address, where Respondent testified they were told by Person B's mother that he lived [REDACTED] with Person A. They did not find Person B after searching the [REDACTED] location. Based on all the information, Respondent believed that Person B might be living with Person A [REDACTED]. He conceded that he did not conduct a motor vehicle record check (Tr. 83, 95, 113-14).

Respondent recounted that Person A opened the door in a "very irate" manner. She told him that she had told the 111 Squad detective "I don't want anybody here" and "You need an appointment to be here" (Tr. 84-85, 100).

Respondent asserted that he never placed his foot in Person A's door, contending instead that he simply utilized "that little space that she gave me" to try to see if Person B was there or if he heard any movement. He denied holding the door open while Person A tried to close it. He said that after speaking to Person C, who told him that Person B had not been at the residence recently and seeing how agitated Person A was, he used "some discretion and decided not to enter the apartment." Respondent believed, though, that he would have been justified to enter based on the bench warrant and his investigation of Person B's possible residences (Tr. 85-86, 88, 101-03). Fitzpatrick agreed that Respondent did not place his foot in the door (Tr. 57).

Under the specific facts of this case and the specification preferred, it is unnecessary to determine whether Respondent entered Person A's apartment because Respondent had legal authority to enter her home and search for Person B.

The relevancy of the bench warrant involves the interplay of several statutes and laws. An arrest warrant generally affords a police officer authority to enter a dwelling in which the subject of the arrest warrant lives, when there is reason to believe that she is there. Payton v. New York, 445 U.S. 573, 603 (1980). Criminal Procedure Law § 530.70 (2) provides that a bench warrant "must be executed in the same manner as a warrant of arrest, as provided in section 20.80 [of the CPL, covering arrest warrants]". Officers in possession of a bench warrant are allowed to enter a residence if they reasonably believe the target to be present, just as they would for an arrest warrant. See People v. Jones, 99 A.D.3d 1254 (4th Dept 2012) (police lawfully entered defendant's

house to execute bench warrant for defendant's brother, where officers reasonably believed that brother, who resided at same house, was present when they entered). Id. denied, 20 N.Y.3d 1012 (2013); People v. Cabral, 147 Misc. 2d 1000, 1004 n.3 (Sup. Ct., Kings County 1990) (nature, function and manner of bench warrant are similar to arrest warrant). A reasonable belief, for these purposes, is based upon an assessment of the totality of the circumstances. See People v. Paige, 77 A.D.3d 1193, 1194 (3d Dept. 2010), aff'd, 16 N.Y.3d 816 (2011).

But there is a caveat important to this case: even if the officer reasonably believes the subject of the bench warrant to be present, if the premises are the dwelling of a third person, the officer must also obtain a search warrant. See CPL §§ 120.80 (4); 690.05 (2)(b)(i); People v. Baez, 173 Misc. 2d 380, 386 (Sup. Ct., Bronx County 1997). This is because the officer now is searching for something in someone else's residence, as opposed to a warrant designating the seizure of a person in his own residence. See Steagald v. U.S., 451 U.S. 204, 212-13 (1981).

This is in accordance with federal constitutional jurisprudence. An arrest warrant does not justify the search of a third party's residence absent a search warrant. See Steagald, 451 U.S. at 205-06. Police entry is permitted, however, if the officers executing the arrest warrant at the third party's home have a reasonable belief that the suspect resides there. See United States v. Lovelock, 170 F.3d 339, 344 (2d Cir. 1999) (arrest warrant does not authorize entry into third-party residence where officers believe suspect is not residing but merely visiting).

First, contrary to the CCRB's contention, there is no indication that "residence" or "dwelling" means "domicile" for these purposes. If it meant "domicile," no arrest warrant could be issued without the long process of determining a target's domicile:

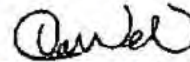
bodily presence with the intent to make the location a fixed and permanent home. See Longwood Cent. School Dist. v. Springs Union Free School Dist., 1 N.Y.3d 385, 388 (2004). That is as opposed to residence or dwelling: the place one currently lives in or sleeps at night. Cf. Lovelock, 170 F.3d at 344 (other tenants' statement that target of warrant "stays" at location was consistent with it being his residence). The Department itself gives no less than ten criteria for determining a member's domicile, which come into play for this tribunal when a member is charged with not living within the residence counties (see Patrol Guide § 203-18 [1]) or registering or insuring a vehicle in a cheaper place that is not her domicile. These include time spent, voting, children's school attendance, attendance at community events and programs, location of personal property, real property-related taxes, address listed on official documents, landline phone number, and nature and size of the claimed domicile. See Operations Order 89 (Aug. 11, 1986). The Court can state with some confidence that arrest warrant procedures do not involve such an extended inquiry.

Here, Person A testified that Person B lived at her apartment "for a couple of years." Person B himself gave the [REDACTED] address as his residence when he was arrested in 2011. The complaint report, dated just one week before the alleged unlawful entry, stated that Person A alleged Person B "came home" and attacked her. Person B's mother told Respondent that he lived with Person A and not [REDACTED] with her. Although that might have been self-serving, the total circumstances fostered Respondent's reasonable belief that Person B resided at the [REDACTED] address and might have been present. See Lovelock, 170 F.3d at 344-45 (location of arrest warrant was listed on warrant as target's residence, this was more current than what he had listed at time of prior arrest, he was a probationer and thus required to report any change of address, probation arrest warrants

commonly showed current addresses, warrant was one day old, and other tenants said he "stays" there).

This could have been done differently. It is cause for concern that a domestic violence victim came away from her interaction with the police feeling that they invaded her home, ignored her concerns about the police scaring her children, and accused her not only of harboring a fugitive but of being one of "those women" who always get back with their abusers. Respondent only is charged, however, with entering Person A's home without sufficient legal authority. Because any entry was not without sufficient legal authority, Respondent is found Not Guilty.


Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

APPROVED

SEP 21 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER